

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

LEBLOND et al.

Atty. Ref.: 3665-181; Confirmation No. 5513

Appl. No. 10/581,947

TC/A.U. 1621

Filed: June 6, 2006

Examiner: Brooks

For: TRICYCLIC HYDROXAMATE AND BENZAMIDE DERIVATIVES, COMPOSITIONS
AND METHODS

* * * * *

August 6, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RULE 144 PETITION

The Director is requested, pursuant to Rule 144 and as further detailed herein, to review the Examiner's withdrawal of claims 34 and 35 from consideration in the Office Action of May 7, 2010.

Decision on the present Petition prior to the Examiner's next Action is requested as the Decision may affect the future examination on the merits. This is not a request for the Patent Office to delay prosecution.

An Amendment After Final Rejection is being concurrently filed in response to the Office Action of May 7, 2010.

Claims 22-41 are pending. Claims 23-26, 28, 34 and 35 are indicated as having been withdrawn from consideration.

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Claims 34 and 35 were indicated in the previous Office Action dated October 28, 2009 as reading on the elected species and were examined. See page 2 of the Office Action dated October 28, 2009. Neither claims 34 nor 35 were amended in the Amendment of January 28, 2010 or the Supplemental Amendment of February 1, 2010 - which were filed in response to the Office Action of October 28, 2009 - such that the Examiner's withdrawal of the claims from consideration, for the first time in the final Office Action of May 7, 2010, is not appropriate or justified.

The Examiner comments on page 2 of the Office Action dated May 7, 2010, that

“claims 23-26, 28, and 34-35 are withdrawn from consideration pursuant to Markush practice as not being anticipated by the art below.”

are unclear as a basis for withdrawing the claims from consideration. The Examiner appears to have withdrawn admitted novel claims from consideration because they are novel over the cited art. Moreover, as claims 36-41 and new claim 42 depend from claim 34, the status of these dependent claims is uncertain in view of the Examiner's withdrawal of claim 34 from consideration.

An early and favorable consideration of the concurrently-filed Rule 144 Petition are requested.

A fee is not believed to be required for consideration of the present Petition as the Petition is being filed in response to what is believed to be Examiner error. The Office is authorized however to charge the undersigned's Deposit Account No. 14-1140 in the event a fee is believed to be required.

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A favorable action on the present Petition and a new Office Action on the merits of all of the claims, or entry of the concurrently-filed Amendment and allowance of the pending claims are requested.

Respectfully submitted,

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